



DEPARTMENT OF PUBLIC ADVOCACY

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July 29, 2010

To: Justices, Kentucky Supreme Court

From: Timothy G. Arnold, Director, Post-Trial Services Division

Re: Comments on Proposed Revision to CR 75.07(7)

The Kentucky Department of Public Advocacy submits the following comments to the proposed revision to CR 75.07(7):

1. Department of Public Advocacy attorneys file approximately 300 briefs each year in the appellate courts. In almost all of those cases, they are relying on a record which has been checked out to them from the appellate court, either pursuant to CR 76.12, or in status offender and *Lewis v. Lewis* cases, pursuant to an administrative order. I believe that in general records are being returned to the clerk's office in approximately the same condition as they were checked out. Consequently, our experience does not support the view that there is a significant problem with the treatment of court records, which requires a rule change.
2. We do not construe this proposal to affect records checked out to the Department of Public Advocacy under CR 76.12 or current administrative orders of the Court of Appeals. However, we do believe this proposal would apply to records checked out to the Louisville Metro Public Defender.
3. To the extent that this proposed change will apply in cases involving indigent defendants, the cost to taxpayers will be substantial. A copy of the record is necessary to prepare an appeal, and an indigent defendant is entitled to a transcript to be provided without cost to him to enable his attorney to prepare his appeal. See, e.g., KRS 453.190. Accordingly, both the copy made to assist defense counsel, and the copy made to assist the Attorney General, will have to be made at taxpayer expense and the copying could delay the timely processing of the appeal.
4. Neither the Department of Public Advocacy, nor the Louisville Metro Public Defender is funded to bear this additional cost.

In light of the foregoing, the Department urges this Court to either reject the proposed change to CR 75.07(7), or to clarify the rule to ensure that it does not apply to cases involving indigent criminal defendants.

If the Court has any further questions about the Department's position on this issue, please feel free to contact me by email at tim.arnold@ky.gov, or by phone at (502) 564-8006.